

Bush v Albany Med. Ctr.
2024 NY Slip Op 35399(U)
August 30, 2024
Supreme Court, Albany County
Docket Number: Index No. 902360-24
Judge: Peter A. Lynch
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

DEBORAH A. BUSH,

Plaintiff,

v.

DECISION AND ORDER

Index No.: 902360-24

(Hon. Lynch, J.)

Albany Medical Center, Albany Medical Center Hospital,
Albany Medical College, Kevin Collins, M.D., Domenica
Scalia, M.D., David Bittner, M.D., Luke Duncan, M.D.,
Emma Meyer, D.O., Christine Cooley, M.D., Nikolas
Moring, M.D., Adam Howe, M.D., and Arshad Sami, M.D.,

Defendants.

INTRODUCTION

This is a medical malpractice action. Plaintiff's attorney, Powers & Santola LLP, moved to be relieved as counsel. No papers were filed in opposition.

**WITHDRAWAL MOTION AND
CHARGING LIEN UNDER JUDICIARY LAW 475**

CPLR § 321 (b) (2) provides:

“(b) Change or withdrawal of attorney.

2. An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, **as the court may direct.**” (Emphasis added)

In Matter of Cassini, 182 A.D. 3d 13, 23 [2d Dept. 2020], the Court held, “the rule in applications for the relief herein is that an attorney may terminate his [or her] relationship of attorney-client at any time for a **good cause**”, citing Matter of Dunn [Brackett], 205 N.Y. 398

[1912]. (Emphasis added) Here, good cause exists to support Counsel's motion to withdraw (See Joffe v. King & Spalding LLP, 2019 U.S. Dist. LEXIS 164960, p. 13 [SDNY 2019]; Matter of Raff & Becker LLP v. Kaiser Saurborn & Mair, P.C., 160 A.D. 3d 479 [1st Dept. 2018]; see also, Kiernan v. Kiernan, 233 A.D. 2d 867 [4th Dept. 1996]).

Judiciary Law § 475 provides, inter alia:

“From the commencement of an action... the attorney who appears for a party has a **lien upon his or her client's cause of action... which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor**, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The **court** upon the petition of the client or attorney **may determine and enforce the lien.**” (Emphasis added)

In Butler, Fitzgerald & Potter v. Gelmin, 235 A.D. 2d 218, 218-219 [1st Dept. 1997], the Court defined the lien remedies as follows:

“There are **three separate and distinct remedies** which are available to a discharged attorney to recover the value of his legal services. The **first remedy** available to an attorney discharged without cause is that sought by the plaintiff in this case, i.e., a plenary action in quantum meruit seeking a judgment for the reasonable value of the services, which would be enforceable against all of the client's assets. Such a cause of action accrues immediately upon the attorney's discharge. The **second remedy available is a charging lien against any judgment or settlement in favor of the client in an action in which the discharged attorney formerly was the attorney of record for the client.** Unlike the first remedy, the charging lien does not provide for an immediately enforceable judgment against all assets of the former client. All it provides to the discharged attorney is security against a *single* asset of the client, i.e., any judgment or settlement reached in favor of the former client in the action in which the discharged attorney was formerly attorney of record. The charging lien is a statutory remedy codified in Judiciary Law § 475. The amount of the charging lien may be

determined and fixed prior to the outcome of the underlying suit. While the **eventual payment of the lien is contingent upon a favorable outcome for the client in the litigation**, the amount of the lien is not dependent upon the result reached in the underlying suit. The third remedy is the **retaining lien**, which permits the attorney to retain all of the client's papers and files until all fees are paid." (Emphasis added)

; see also, Bernard v. DeRham, 161 A.D. 3d 686, 687[1st Dept. 2018], where Court recognized that charging lien "is a security interest against a single asset, i.e., a judgment or settlement in his favor.").

Together, CPLR § 321 (b) (2) and Judiciary Law § 475, constitutes the enabling authority for a Court to determine a withdrawal motion, and corresponding charging lien request.

It is the determination of the Court to grant a charging lien for services rendered in favor of Powers & Santola, LLP against any judgment or settlement in favor of their client, Deborah A. Bush, in this action. In such event, a hearing will be held to determine the amount of the lien (see Klein v. Eubank, 87 N.Y. 2d 459, 463 [1996] where the Court held "a **hearing** should be held on the question of petitioner's entitlement to enforcement of his statutory charging lien; CPMI, Inc. v. Kolaj, 137 A.D. 3d 953, 956 [2d Dept. 2016], where the Court held, "where there are conflicting claims as to ...whether an outgoing attorney was discharged with or without cause, a **hearing is necessary** to resolve such dispute"; see also, Hudson v. Hahn Kook Ctr. (USA), Inc., 136 A.D. 3d 459 [1st Dept. 2016], where Court reversed and remanded "for a **hearing** to determine whether [counsel]...is entitled to enforce its charging lien").

RETENTION OF FILE/DISBURSEMENTS

Powers & Santola, LLP have expended monies on disbursements, and are entitled to reimbursement pursuant to the terms of the retainer agreement. In Bing Hui Chen v Speedway Plumbing Corp., 138 A.D.3d 660 [2d Dept. 2016], the Court held,

"Under New York law a client may discharge an attorney at any time, with or without cause". If a client discharges an attorney without cause, the attorney possesses a common-law retaining lien on the client's file in his or her possession and is entitled to recover compensation from the client measured by the fair and reasonable value of the services rendered, regardless of whether that amount is more or less than the amount provided in the contract or retainer agreement. **"Absent evidence of discharge for cause, a court should not order turnover of an outgoing attorney's file before the client fully pays the attorney's disbursements or provides security therefor."** (internal citations omitted) (emphasis added)

; see also Nassau Regional Off-Track Betting Corp. v. KRD Media, LLC, 185 A.D. 3d 598 [2d Dept. 2020]. It is the determination of the Court that Powers & Santola, LLP is not required to turn over its file to Plaintiff, or Plaintiff's representative, unless Plaintiff fully reimburses Powers & Santola LLP for disbursements rendered to date.

CONCLUSION

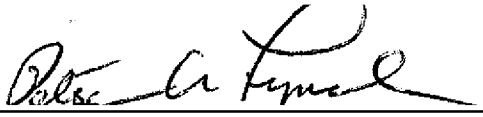
For the reasons more fully stated above, Powers & Santola, LLP's motion to withdraw as Plaintiff's counsel is granted, and it is further,

Ordered, Powers & Santola, LLP is granted a charging lien for services rendered against any judgment or settlement in favor of Deborah Bush in this action, and in such event, a hearing shall be conducted to determine the amount of the lien, and it is further,

Ordered, the within action is stayed a for a period of 60 days from the date hereof, to give Plaintiff a reasoned opportunity to secure new counsel.

This memorandum constitutes both the decision and order of the Court.

Dated: Albany, New York
August 30, 2024



PETER A. LYNCH, J.S.C

09/03/2024

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits

And Notice of Motion dated August 1, 2024, with supporting affirmation and exhibits, submitted to the Court for an in-camera review.

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